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Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
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Implementation of the Local Competition ) CC Docket No. 96-98  
Provisions of the Telecommunications )  
Act of 1996 )

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**OPPOSITION TO PETITIONS FOR RECONSIDERATION**

Bell Atlantic NYNEX Mobile, Inc. (BANM) hereby opposes three petitions for reconsideration<sup>1</sup> of the Commission's Second Report and Order in this proceeding,<sup>2</sup> which request that area code "overlay" plans be prohibited until permanent number portability is available.

**I. SUMMARY**

The Commission has already considered and rejected petitioners' request that overlays be conditioned on the presence of permanent number portability. It has declared: "Requiring the existence of permanent service provider number portability in an area before an overlay area code may be implemented . . . would

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<sup>1</sup>MFS Communications Company, Inc. Petition for Partial Reconsideration, Petition for Reconsideration of Teleport Communications Group Inc., Petition for Reconsideration of Cox Communications Inc., filed October 7, 1996. Public Notice of these petitions occurred on November 5, 1996. 61 Fed. Reg. 56957. This Opposition is thus timely under Section 1.429 of the Commission's Rules.

<sup>2</sup>Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, FCC 96-333, released August 8, 1996 ("Second Report").

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effectively deny state commissions the option of implementing any all-services overlays while many area codes are facing exhaust." Second Report at ¶ 290. There is no legal or factual basis for the Commission to change this conclusion. Having correctly found that states play a critical role in selecting an NPA relief plan based on the particular needs and concerns of their citizens, the Commission cannot now cripple states from adopting an all-service overlay as their NPA relief method of choice by requiring that permanent number portability first be in place. There is no competition-related concern which comes close to warranting the effective prohibition on overlays that these petitioners demand.

## **II. THE SECOND REPORT PROPERLY REAFFIRMED THAT STATES MAY CHOOSE OVERLAYS.**

The Second Report held that, while the Commission has jurisdiction to establish numbering administration policy, authority to decide on specific area code relief plans (including to adopt overlays) should be delegated to state commissions because these agencies are "uniquely positioned to understand local conditions and what effect new area codes will have on those conditions." (¶ 272.)

New Section 52.19, entitled "Area Code Relief," codifies this proper balancing of federal and state interests by granting states discretion to "resolve matters involving the introduction of new area codes within their states," and to "perform any or all functions related to initiation and development of area code relief plans, so long as they act consistently with the guidelines enumerated in this part, and subject to paragraph (b)(2) of this section." Section 52.19(b)(2)

conditions use of overlays on the presence of ten-digit dialing and the availability to each carrier of one NXX code in the old NPA. The Second Report (at ¶¶ 286-89) made specific findings that these requirements provide sufficient safeguards, and would "ensure that competition will not be deterred in overlay area codes as a result of dialing disparity."

Subject to these guidelines, states have the authority to develop and implement NPA relief plans that they determine will best resolve the many concerns and considerations involved in initiating use of a new area code. This includes the authority to adopt overlays. The Second Report thus reaffirms the Commission's policy of balancing federal and state interests in numbering issues.

### **III. PETITIONERS' REQUEST WOULD EFFECTIVELY PROHIBIT STATES FROM ADOPTING OVERLAYS, CONTRARY TO NANP POLICY AND DESPITE THE CLEAR BENEFITS OF OVERLAYS.**

MFS, Teleport and Cox argue in their petitions for reconsideration that the Commission should have imposed still another condition, permanent number portability, before states can implement an area code overlay.<sup>3</sup> Granting their

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<sup>3</sup>It is notable that, despite the dozens of CLECs and other service providers which participated in this proceeding, only three argue that Section 52.19 does not go far enough, and ask that it be extended to require permanent number portability as a condition to overlays. Most parties filing petitions for reconsideration took the opposite position -- that Section 52.19 goes too far in restricting overlays -- and ask that the ten-digit dialing and one-NXX per customer conditions be removed or modified as unnecessary and burdensome. See Petitions for Reconsideration filed by Pennsylvania Public Utility Commission at 2-6, New York State Department of Public Service at 2-9, United States Telephone Association at 9-10, Paging Network, Inc. at 2-7, NYNEX at 13-15, and BellSouth at 8-9.

petitions would as a practical matter eliminate states' discretion to rely on overlays to address NPA exhaust situations where geographic splits are found not to be in the public interest. The Commission should reject these petitions.

First, the petitioners merely reargue the same points they already advanced unsuccessfully in their comments in this docket. The Commission addressed these points and concluded that requiring the existence of permanent number portability would conflict with its numbering administration goals. Second Report at ¶ 290. Petitions for reconsideration are not granted when they simply reiterate arguments which have already been addressed and rejected.<sup>4</sup>

Second, even were the Commission to take up these claims again, they are no more persuasive than they were the first time. When mere speculation as to potential anticompetitive risks is put to one side, there is nothing left that would support the change petitioners request. While petitioners continue to rail against supposed anticompetitive effects from an overlay, they fail to establish why such effects would occur. Moreover, they fail to show why the specific conditions which the Commission has adopted are not sufficient safeguards. And, while petitioners belittle interim number portability, the plain fact is that it does permit customers to keep their current numbers and switch to new providers. Petitioners fail to supply any facts which rebut the Second Report's finding on this point, or to

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<sup>4</sup>"Petitions for reconsideration are not granted for the purpose of debating matters which have already been fully considered and subsequently settled. . . . Bare disagreement, absent new facts and argument properly placed before the Commission, is insufficient grounds for reconsideration." Direct Broadcast Satellite Service, 53 RR2d 1637, 1641-42 (1983).

produce evidence that interim number portability has been inadequate, unworkable, or has precluded their provision of service.

Third, adopting the condition petitioners request would, as the Second Report recognized (at ¶ 290), effectively kill overlays as a solution to the many urgent area code exhaust situations now occurring, despite findings by several states that overlays are the best solution to area code exhaust. In New Jersey, Massachusetts, Virginia, California, and many other states, commissions are engaged at this moment in developing relief plans. Because, however, permanent number portability does not yet exist in any market, conditioning overlays on its availability would mean that overlays could not be adopted.

Precluding overlays would contradict the Commission's prior decisions as to NANP relief, which recognized the benefits of overlays and permitted them as long as certain conditions were met.<sup>5</sup> It would take away from states, without any legal basis, the right to select a relief plan that best meets the needs of their own citizens. And it would limit states to geographic splits, although that option is itself being challenged by wireless carriers.<sup>6</sup>

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<sup>5</sup>See, e.g., Proposed Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, 10 FCC Rcd 4596 (1995).

<sup>6</sup>AT&T and AirTouch Paging have argued in this docket that a split which forces wireless customers to change their numbers is improper because of the unique costs and burdens imposed on wireless carriers and customers caused by the need to reprogram phones of customers on the "new" side of the split. AT&T Petition for Limited Reconsideration and Clarification at 12 (splits "disproportionately burden" wireless customers); AirTouch Paging Petition for Partial Reconsideration and Clarification at 15-22 (a split with mandatory take-backs of wireless numbers is "facially discriminatory and unlawful"). Given these challenges

The record contains ample evidence that overlays are an efficient, forward-looking alternative to the traditional geographic split. Two states, Pennsylvania and Maryland, have adopted overlays, and other states are considering them because of the recognition that, particularly in metropolitan areas, splits are confusing to the public, costly to customers, and do not provide a long-term solution. Last year, the Maryland Public Service Commission chose an overlay for the new 410 area code, and concluded:

[T]he overlay, unlike a geographic split, does not force existing subscribers to undergo the costs and hardships of changing their existing telephone numbers. The Overlay is also competitively neutral because it would apply equally to all services and companies in the various interested industries. Even those parties that advocate a geographic split in this proceeding generally recognize that further measures, most probably including future overlays, will be necessary in the next few years.<sup>7</sup>

In adopting an overlay for the 412 NANP (Pittsburgh area) just two months ago, the Pennsylvania Public Utility Commission found that "an overlay is the most practical means of addressing number shortages."<sup>8</sup>

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to the geographic split option, it would be improper and illogical to restrict NPA relief to that one option.

<sup>7</sup>Maryland Public Service Commission, Order, November 22, 1995, at 19. MFS incorrectly asserts (Petition at 3 n.2) that the Maryland PSC's decision was premised "mistakenly on the availability of permanent service provider number portability by the time of the NPA relief." It does not cite any language in the Order for this claim. To the contrary, the Order did not make implementation of the overlay contingent on permanent number portability.

<sup>8</sup>Pennsylvania Public Utility Commission, Order, Docket No. P-00961027, September 12, 1996, at 11.

Public hearing testimony in those states, and other states considering relief options, has shown extensive support for overlays, which have a major advantage because they do not force existing customers to change their phone numbers. While this is a benefit to all customers, it is particularly significant to wireless customers. Under a geographic split, wireless customers who are on the "new" side of the split boundary must have their phones physically reprogrammed. There is detailed evidence before the Commission as to the significant costs and burdens that reprogramming imposes on wireless carriers and the public.<sup>9</sup> Given the recognized benefits of overlays, effectively precluding them would violate the Commission's own NANP goals.

Fourth, petitioners dwell exclusively on claims as to potential competitive impact of overlays on themselves. This is not, however, the only consideration. The Commission has made it clear that numbering administration policy must take into account numerous considerations in addition to the impact on landline CLECs, including the impact on other new entrants,<sup>10</sup> the needs of residents and

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<sup>9</sup>See Implementation of the Local Competition Provision of the Telecommunications Act of 1996, CC Docket No. 96-98, Reply Comments of Bell Atlantic NYNEX Mobile, Inc., filed June 3, 1996 (converting each customer's phone involves costs of approximately \$40, which translates into millions of dollars in any geographic split). The costs and burdens of geographic splits were detailed in comments which were recently filed in a separate docket. Petition for Declaratory Ruling of the Massachusetts Department of Public Utilities, NSD File No. 96-15. See, e.g., Comments of AT&T Wireless Services, Inc., Bell Atlantic NYNEX Mobile, Inc., and Southwestern Bell Mobile Systems, Inc., filed Nov. 6, 1996.

<sup>10</sup>It is important to recognize that, while some CLECs would prefer banning overlays, BANM and many other wireless carriers have consistently advocated them. Any change to Section 52.19 which effectively prohibits overlays would

businesses, the burdens placed upon them, and the joint federal-state responsibilities for numbering. The Second Report balanced these considerations properly.

Fifth, permanent number portability will become available soon in any event. The Commission has ordered incumbent LECs to implement it beginning in the fourth quarter of 1997, and the 100 largest MSAs will have permanent number portability by the end of 1998.<sup>11</sup> Any possible harms, if they were to materialize at all, would be short-lived, and do not warrant forcing states to adopt a long-term geographic split solution that will affect their citizens for many years. In addition, state commissions are better equipped to determine what, if any, threat to competition would result if permanent number portability were not in place prior to code exhaust, and to take this into account in selecting among NPA relief options.<sup>12</sup> The Commission should not further intrude onto their responsibilities by foreclosing overlays based on a theoretical short-term competitive harm.

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unlawfully fail to take into account the equally important interests of this large and growing group of service providers.

<sup>11</sup>Telephone Number Portability, FCC 96-286, CC Docket No. 95-116, released July 2, 1996.

<sup>12</sup>The Pennsylvania Public Utilities Commission recently addressed this very issue in deciding to adopt an overlay for Pittsburgh: "[I]nterim number portability is available now and long term number portability will begin next year. With portability, an overlay is the most practical means of addressing number shortages. It would not be prudent regulation to cause customers as well as carriers to bear substantial costs associated with a geographic split, only to implement an overlay in the not so distant future. . . . Not implementing an overlay in the 412 area at this time would only delay the inevitable." Order, Docket No. P-00961027, September 12, 1996, at 11.



#### IV. CONCLUSION

For these reasons, the petitions of MFS, Teleport and Cox, insofar as they request that the Commission require the presence of permanent number portability as a precondition to an area code overlay, should be denied.

Respectfully submitted,

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Dated: November 20, 1996

CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of November, 1996, caused copies of the foregoing "Opposition to Petitions for Reconsideration" to be sent by first-class mail, postage prepaid, to the following persons:

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